



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

Honorable Robert D. Smither
County Attorney
Walker County
Huntsville, Texas

Dear Mr. Smither:

Opinion No. 0-5107

Re: Whether or not a District
Judge may serve as Public
Member of Regional War
Labor Board without vacat-
ing his office of District
Judge.

We beg to acknowledge receipt of your request for an opinion from this department with respect to the above-captioned subject matter.

First, we shall determine the nature of the membership in the Regional War Labor Board to see whether or not its occupancy may be incompatible with our constitutional limitations with respect to dual office-holding.

On January 24, 1942, the President, by Executive Order No. 9017, created the National War Labor Board, with general powers to adjust and settle labor disputes which might interrupt work which contributes to the effective prosecution of the war, giving it not only broad but final jurisdiction in such matters.

By the President's Executive Order No. 9250, of date October 3, 1942, the powers, functions and duties conferred upon the Board by Executive Order No. 9017, were confirmed and made applicable "to cover all industries and all employees."

On January 21, 1943, the National War Labor Board released its order establishing:

"Twelve Regional War Labor Boards, with full authority to make final decisions in labor disputes and involuntary wage and salary adjustment cases are being established by the National War Labor Board under a sweep-

ing decentralization program announced today by the Board.

"Each of the Regional Boards will be set up on the same tripartite system of public, employer and labor representatives as the National Board. In addition the program calls for establishment of permanent tripartite panels in all the major cities of the United States to handle dispute cases, and to make recommendations to the Regional Boards. * * *

"The National War Labor Board in Washington, under the new procedure, will function as a supreme court for labor disputes, reserving the right to review Regional Board decisions on its motion or by granting a petition to appeal filed by one of the parties to a case. * * *

"Any party will have the right, within ten days after the issuance of a directive order by a Regional Board, to petition to the National Board for a review of the case."

Further, we are advised that each member of the Regional Board is required to take an oath of office and to serve a maximum time of four days monthly with remuneration of \$18.00 per day and expenses.

Section 40, of Article XVI, of the Constitution, declares:

"No person shall hold or exercise, at the same time, more than one civil office of emolument", (except certain enumerated offices and positions).

Membership in such a board is not named in the exceptions.

Section 33 of the same Article declares:

"The accounting officers of this State shall neither draw nor pay a warrant upon the treasury in favor of any person, for salary or compensation as agent, officer

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or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution."

The exceptions do not include the office or position of the membership involved.

We beg to advise that in our opinion membership in the Regional War Labor Board does come within the prohibitions of the Constitution in both sections above quoted.

The general characteristics of an office are, (a) that its incumbent exercises some portion of the sovereign power of the State; (42 Am. Jur. p. 832, Sec. 4); (b) that it embraces the idea of tenure and duration; (c) (ibid. p. 883; Sec. 5); and (d) that it embraces the further idea of fees or compensation; (ibid. p. 884, Sec. 6).

The position of member of the Regional War Labor Board has all the indicia of an office as contra-distinguished from an employment or other position whatsoever. While no one, or even more of the above indicia are conclusive in all cases, nevertheless each is persuasive.

On June 2, 1942, the Attorney General of Louisiana held that service as a member of the Parish (county) Rationing Board (without compensation) where the member was required to take an oath of office, is an office within the meaning of the constitution of that state forbidding dual office-holding.

In the recent cases of *Carpenter v. Sheppard*, 145 S. W. (2) 562, *Spears v. Sheppard*, 150 S. W. (2) 769, and *Cramer v. Sheppard*, 167 S. W. (2) 147, by our Supreme Court, the dual office-holdings involved were held to be within specific exceptions of the Constitution, and therefore not forbidden, thus emphasizing the necessity for such constitutional exceptions to take such Federal offices out of the prohibition of our Constitution.

That membership in the Regional War Labor Board, if not an office, is nevertheless a position of honor, trust and profit under the United States, within the meaning of Section 33, of Article XVI, of the Constitution above quoted,

is, we think, beyond controversy.

This department has made many rulings upon very similar, though not identical situations, as follows:

The Lieutenant Governor may not hold the position of Professor of Journalism in the State University, and at the same time receive from the treasury compensation for his official services. (Opinions Attorney General 1912-1914, p. 873).

Other opinions deal with the question of scope of Section 33, Article XVI, involving the following dual services:

Head of Department of Genetics of the A. & M. College and State Seed and Plant Board membership. (Opinion No. 0-4562).

A State officer and Civilian Defense membership. (Opinion No. 0-4542).

State Representative and employment with Federal government as a printer under Civil Service. (Opinion No. 0-3642).

Employee as medical consultant in the Crippled Children's Division of the Department of Education, and Director of the Maternal and Child Health Division of the State Department of Health. (Opinion No. 0-3788).

State or county officer and Supervisor in Soil Conservation District. (Opinion No. 0-3395).

Texas State Board of Medical Examiners and special State Ranger. (Opinion No. 0-3045).

Employee of a State eleemosynary institution and of State Department of Public Welfare. (Opinion No. 0-3061).

Member State Board of Medical Examiners and a special State Ranger. (Opinion No. 0-3045).

Member Board of Directors of the Texas College of Arts and Industries and County Superintendent of Public Instruction. (Opinion No. 0-2991).

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Old Age Assistance investigator and employee State Department of Public Welfare. (Opinion No. 0-2701).

Inspector for the Texas Liquor Control Board and trustee of an independent school district. (Opinion No. 0-2528).

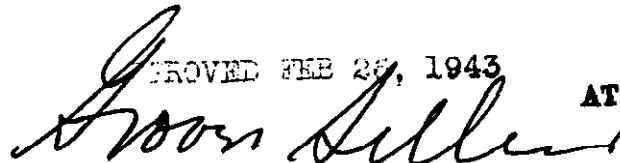
Member County Board of School Trustees and member of local community committee Agricultural Adjustment Administration. (Opinion No. 0-2226).

Trusting that what we have said fully answers your inquiry, we are

Very truly yours

APPROVED FEB 26, 1943

ATTORNEY GENERAL OF TEXAS



DEPUTY ASSISTANT
ATTORNEY GENERAL

By


Ocie Speer
Assistant

OS-MR



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